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19 *Counsel for Plaintiff*

20 **IN THE UNITED STATES DISTRICT COURT  
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 JEFF HANCOCK, Individually and on ) Case No. 2:19-cv-02602  
23 Behalf of All Others Similarly Situated, )

24 ) **CLASS ACTION COMPLAINT**  
25 Plaintiff, ) **FOR:**

26 v. ) 1. **VIOLATIONS OF**  
27 ) **47 U.S.C. § 227(b)(1)(A)(iii)**  
28 JACKSON HEWITT TAX SERVICE ) 2. **VIOLATIONS OF**  
INC., ) **47 C.F.R. § 64.1200(d)**  
Defendant. )  
29 ) **DEMAND FOR JURY TRIAL**

1. Plaintiff, Jeff Hancock (“Hancock” or “Plaintiff”), brings this action  
 2 under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, a  
 3 federal statute enacted in response to widespread public outrage over the  
 4 proliferation of intrusive, nuisance telemarketing practices. *See Mims v. Arrow*  
 5 *Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

6. Plaintiff received unsolicited, autodialed text message calls over the  
 7 past several years, urging him to have Defendant, Jackson Hewitt Tax Service,  
 8 Inc. (“Jackson Hewitt” or “Defendant”) do his taxes.

9. Jackson Hewitt did not have prior express written consent to send  
 10 these texts. Moreover, the texts Jackson Hewitt sent were impermissible because  
 11 Defendant had a defective internal Do Not Call policy.

12. Given that these violations are widespread, and that Jackson Hewitt  
 13 has been sued multiple times for TCPA violations, a class action is the best means  
 14 of obtaining redress for Defendant’s illegal text messaging, and is consistent both  
 15 with the private right of action afforded by the TCPA and the fairness and  
 16 efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

## 17 PARTIES

18. Plaintiff is a natural person residing in Williamson County, Texas,  
 19 and is a “person” as defined by 47 U.S.C. § 153(39). Plaintiff, thus, is a citizen of  
 20 Texas. At all relevant times, Plaintiff was the subscriber for the cellular telephone  
 21 at issue.

22. Jackson Hewitt is a Delaware corporation headquartered at 10  
 23 Exchange Place, 27th Floor, Jersey City, New Jersey 07302. Defendant, thus, is a  
 24 citizen of Delaware and New Jersey. Upon information and belief, Jackson  
 25 Hewitt maintains dozens of offices within this District, each of which benefits  
 26 from its illegal telemarketing, and each of which was required to adhere to  
 27 Jackson Hewitt’s defective internal Do Not Call policy.

7. Non-party CallFire, Inc. d/b/a EZ Texting (“CallFire”) is a Delaware corporation headquartered in this District, at 1410 2nd Street, Suite 200, Santa Monica, California 90401. CallFire, thus, is a citizen of Delaware and California. Jackson Hewitt hired CallFire to send the texts that are the subject of this case, and CallFire sent those texts from its offices within this District.

## **JURISDICTION AND VENUE**

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff's claims arise under federal law.

9. Additionally, the Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. 1332(d)(2). The matter in controversy exceeds \$5,000,000 in the aggregate, exclusive of interest and costs, as each member of the proposed class of at least tens of thousands is entitled to up to \$1,500 in statutory damages for each call that has violated the TCPA. Further, Plaintiff alleges a nationwide class, which will result in at least one class member residing in a state different from Defendant.

10. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this District.

## TCPA BACKGROUND

11. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing … can be an intrusive invasion of privacy[,]” and found that “[b]anning such automated or prerecorded telephone calls … is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, §§ 2(5), 2(14) (1991) (codified at 47 U.S.C. § 227).

12. Some of the TCPA's most stringent restrictions pertain to calls

1 placed to cell phones: The statute broadly bans the making of any non-emergency  
 2 call using an automatic telephone dialing system or an artificial or prerecorded  
 3 voice to any telephone number assigned to a cellular telephone service, unless  
 4 with the “prior express consent” of the called party. 47 U.S.C. §  
 5 227(b)(1)(A)(iii); *see also Soppet v. Enhanced Recovery Co.*, 679 F.3d 637, 638  
 6 (7th Cir. 2012) (“An automated call to a landline phone can be an annoyance; an  
 7 automated call to a cell phone adds expense to annoyance.”). The FCC—charged  
 8 by Congress to develop the rules and regulations implementing the TCPA, *see* 47  
 9 U.S.C. § 227(b)(2)—has further strengthened this prohibition; for autodialed or  
 10 prerecorded voice telemarketing calls made to cell phones on or after October 16,  
 11 2013, prior express *written* consent is required. *See* 47 C.F.R. § 64.1200(a)(2). A  
 12 text message is a “call” under the TCPA. *In re Rules & Regs. Implementing the*  
 13 *TCPA*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

14       13. The TCPA also prohibits initiating any telemarketing call unless the  
 15 person or entity has instituted procedures for maintaining a list of persons who  
 16 request not to receive telemarketing calls made by or on behalf of that person or  
 17 entity. 47 C.F.R. § 64.1200(d). This includes, *inter alia*, having a written policy,  
 18 available upon demand, for maintaining a do-not-call list, training personnel  
 19 engaged in any aspect of telemarketing on the existence and use of the do-not-call  
 20 list, identifying the name of the caller during each call, the name of the person or  
 21 entity on whose behalf the call was made, and associated phone or address  
 22 information, and actually honoring do-not-call requests within a reasonable time  
 23 from the date such request is made. *Id.*

24       14. Further, a person or entity can be liable for calls made on its behalf  
 25 in violation of the TCPA, even if that person or entity did not directly dial such  
 26 calls. *See, e.g., In re Rules & Regs. Implementing the TCPA*, 10 FCC Rcd.  
 27 12391, 12397 ¶ 13 (1995) (explaining that the FCC’s “rules generally establish

1 that the party on whose behalf a solicitation is made bears ultimate responsibility  
 2 for any [TCPA] violations”).

3 **FACTS**

4 15. On about March 27, 2019, Jackson Hewitt sent Plaintiff a text  
 5 message to his cell phone through its texting vendor, CallFire. A partial screen  
 6 shot of this text message is attached as Exhibit A.

7 16. Around the time of the text, Plaintiff was dealing with a family  
 8 tragedy, and the text added to the chaos of life during this difficult time.

9 17. This text message was sent for the purpose of encouraging Plaintiff  
 10 to purchase Jackson Hewitt goods and services.

11 18. This was not the first text Defendant had sent Plaintiff. Jackson  
 12 Hewitt sent Plaintiff’s cell phone number several similar texts in the four years  
 13 prior to the filing of this case.

14 19. In March 2019, Plaintiff called his local Jackson Hewitt office to  
 15 complain. The person with whom Plaintiff spoke stated that the local office had  
 16 received numerous complaints about these texts, and that they had come from the  
 17 “corporate office.” The employee at the local office promised to relay Plaintiff’s  
 18 concerns, and request not to be called, to “corporate.”

19 20. Although the texts he received did not instruct him to do so, Plaintiff  
 20 also tried reply-texting “Stop” in an attempt to make the texts cease.

21 21. Jackson Hewitt sent the texts that are the subject of this case using an  
 22 automatic telephone dialing system, as that term is defined in the TCPA.

23 22. The texts that Jackson Hewitt sent Plaintiff were form  
 24 communications that were sent to thousands of consumers with identical - or  
 25 nearly identical - verbiage.

26 23. The texts that Jackson Hewitt sent Plaintiff were sent in “blasts” of  
 27 multiple texts at once.

24. Upon information and belief, the texts were sent as follows: Jackson Hewitt provided – or uploaded – a list of phone numbers and other consumer information to CallFire, through the Internet.

25. Defendant set the parameters for texting, including computer commands and settings designed to prevent the sending of texts outside permissible contact hours, through a CallFire web portal. CallFire's computers used the data Jackson Hewitt provided to, for example, ensure that texts were not sent too early on the West Coast, or too late on the East Coast. This function is typically called "curfew."

26. CallFire's computers stored the numbers Jackson Hewitt provided, and automatically sent the texts – *i.e.*, made the calls that are the subject of this case – according to Jackson Hewitt's instructions.

27. CallFire's computers generated a sequence for sending the texts, based upon the demographic and other information Jackson Hewitt provided, and then automatically dialed those numbers.

28. Plaintiff and the class were damaged by these text messages, as their privacy was invaded (e.g., intrusion upon seclusion and trespass), they temporarily lost use of their phones, and they were forced to deal with these illegal messages.

## **CLASS ACTION ALLEGATIONS**

29. As authorized by Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and a Rule 23(b)(3) (or, in the alternative, Rule 23(b)(2)) class consisting of:

All persons in the United States (i) to whom a text was sent for the purpose of encouraging the purchase of Jackson Hewitt goods or services (ii) to a cellular telephone number, (iii) using the same or similar texting system as was used in the calls to Plaintiff, where (iv)

1 Jackson Hewitt did not have a signed writing authorizing automated  
2 telemarketing texts from Jackson Hewitt at the time such calls were  
3 made (the “Class”).

4 Plaintiff alleges a sub-class of persons who, like Plaintiff,  
5 received two or more texts within a 12-month period (the  
6 “Sub-Class”).

7 The Class and Sub-Class are collectively referred to herein as the “Class”.

8 30. Upon information and belief, Jackson Hewitt texted more than 1,000  
9 cellular telephone numbers for the purpose of encouraging the purchase of its  
10 goods and services in 2019, using the same or similar texting system as was used  
11 in the calls to Plaintiff, without prior written authorization.

12 31. Common questions of law or fact exist as to all members of the Class  
13 and Sub-Class, and predominate over any questions solely affecting any  
14 individual member, including Plaintiff. Such common questions include, but are  
15 not limited to, the following:

- 16 a. Whether the texts at issue used an “automatic telephone  
17 dialing system” or an “artificial or prerecorded voice” as such  
18 terms are defined or understood under the TCPA and  
19 applicable FCC regulations and orders;
- 20 b. Whether Jackson Hewitt had “prior express written consent”  
21 to contact Plaintiff and the other members of the Class when  
22 causing calls to be made to such persons’ cell phones using an  
23 automatic telephone dialing system or an artificial or  
24 prerecorded voice, pursuant to 47 C.F.R. § 64.1200(f)(8);
- 25 c. Whether Jackson Hewitt implemented proper Do Not Call  
26 procedures under 47 C.F.R. § 64.1200(d); and
- 27 d. Damages, including whether Defendant’s violations were  
28 performed willfully or knowingly such that Plaintiff and the

other members of the Class are entitled to trebled damages under 47 U.S.C. §§ 227(b)(3) or 227(c)(5).

32. Plaintiff's claims are typical of the claims of the other members of the Class. The factual and legal bases of Jackson Hewitt's liability to Plaintiff and the other Class members are the same: Defendant violated the TCPA by sending texts to each member of the Class, including Plaintiff, using an automatic telephone dialing system, without the requisite permission.

33. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests that might conflict with the interests of the Class, is interested in pursuing these claims vigorously, and has retained counsel competent and experienced in class and complex litigation, including with regard to the claims alleged herein.

34. Class action treatment is superior to all other alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual action would entail. There are, on information and belief, thousands of members of the Class, such that joinder of all members is impracticable.

35. No difficulties are likely to be encountered in the management of this action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

36. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual Class members, should they even realize that their rights have been violated, would likely create the risk of inconsistent or varying adjudications with

respect to individual Class members that would establish incompatible standards of conduct.

37. The identity of the Class is, on information and belief, readily identifiable from Defendant’s and its vendors’ records. CallFire’s texting platform permits users to easily do sophisticated queries that will identify Class members. Moreover, Jackson Hewitt knows – or should know – which phone numbers it texted. Plaintiff thus anticipates issuing direct notice to all members of the Class identifiable through Defendant’s records or those of its vendors, including by means of a reverse-lookup, if necessary, supplemented by internet or other form of publication notice.

## COUNT I

## **Violations of the TCPA, 47 U.S.C. § 227**

## **(Autodialed and/or Artificial or Prerecorded Voice Call Violations)**

38. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

39. It is a violation of the TCPA to make “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service ....” 47 U.S.C. § 227(b)(1)(A)(iii).

40. Jackson Hewitt initiated, or caused to be initiated, calls to the cellular telephone numbers of Plaintiff and the other members of the Class by using an automatic telephone dialing system, or an artificial voice.

41. These calls were made without regard to whether or not Defendant had previously obtained proper consent or permission from the called party to make such calls. Jackson Hewitt did not have prior express consent to call the cell phones of Plaintiff and the other members of the Class when the calls were made.

1       42. The texts Plaintiff and other Class members received did not  
 2 properly explain how to opt-out of future texts, pursuant to 47 C.F.R. §  
 3 64.1200(b).

4       43. Defendant's calls and violations were negligent; alternatively, they  
 5 were willful or knowing.

6       44. On information and belief, some of the calls to Plaintiff and the  
 7 Class were made by vendors of Defendant. Defendant is liable for those calls, too.

8       45. As a result of Defendant's conduct and pursuant to Section 227(b)(3)  
 9 of the TCPA, Plaintiff and the other members of the Class were harmed and are  
 10 each entitled to a minimum of \$500 in damages for each violation. Plaintiff and  
 11 the Class are also entitled to an injunction against future calls. 47 U.S.C. §  
 12 227(b)(3).

13       46. Jackson Hewitt has been sued for TCPA violations before, and  
 14 knows about the TCPA's restrictions. It elected to send the text messages  
 15 described herein in spite of its knowledge and prior experience.

16       47. Because Defendant knew or should have known that Plaintiff and the  
 17 other members of the Class had not given prior express consent to receive its text  
 18 message calls to their cell phones—and/or willfully caused such calls to be made  
 19 to the cell phones of Plaintiff and the other members of the Class without prior  
 20 express consent—the Court should treble the amount of statutory damages  
 21 available to Plaintiff and the other members of the Class, pursuant to Section  
 22 227(b)(3) of the TCPA.

23       48. Moreover, because Jackson Hewitt has been sued for TCPA  
 24 violations before but failed to cease the illegal activity, it is clear that both money  
 25 damages and injunctive relief are necessary to wrench proper compliance.

26       WHEREFORE, Plaintiff, individually and on behalf of the Class,  
 27 requests that the Court appoint Plaintiff as Class representative, appoint his  
 28

1 counsel as Class Counsel, and enter judgment against Defendant for:

- 2 A. Certification of the Class as alleged herein;
- 3 B. A declaration that Defendant violated the TCPA as to Plaintiff
- 4 and the Class;
- 5 C. An injunction to prevent further violations;
- 6 D. Damages pursuant to 47 U.S.C. § 227(b)(3), as applicable;
- 7 E. Costs, expenses, and attorneys' fees, to the extent permitted by
- 8 law; and
- 9 F. Such other or further relief as the Court deems just and proper.

10 **COUNT II**  
11 **Violations of the TCPA, 47 U.S.C. § 227**  
12 **(Internal Do Not Call Violations)**

13 49. Plaintiff re-alleges and incorporates the foregoing allegations as if  
14 fully set forth herein. Plaintiff brings this Count II on behalf of himself and the  
15 Sub-Class.

16 50. The TCPA, 47 C.F.R. § 227(d), prohibits all telemarketing phone  
17 calls and text messages, unless the caller has, and honors, a written internal Do  
18 Not Call policy.

19 51. Jackson Hewitt's internal Do Not Call policy is posted on the  
20 Internet, but the policy states that it applies to Nevada residents only. *See Exhibit*  
21 B.

22 52. The policy states: "Depending on where you live, you may have  
23 additional privacy protections under some state laws."

24 53. While it is true that some states may afford internal Do Not Call  
25 protections, this written policy fails to notify consumers of their rights under  
federal law.

26 54. Even if Jackson Hewitt has another internal Do Not Call policy

1 designed to deal with the TCPA, the false statements in Exhibit B regarding  
 2 consumers' Do Not Call rights, which are prominently posted on the Internet,  
 3 overshadow any such policy: Of course, the federal TCPA requires *nationwide*  
 4 compliance, not just state-by-state compliance.

5       55.       Because Jackson Hewitt's internal Do Not Call policy is  
 6 noncompliant with 47 C.F.R. § 64.1200(d), Jackson Hewitt was not allowed to  
 7 send any text messages or make any calls, the purpose of which were to solicit  
 8 sale of goods or services.

9       56.       Plaintiff received more than one text on his cell phone within a  
 10 12-month period while Jackson Hewitt did not have proper Do Not Call policies.  
 11 Indeed, as described above, when Plaintiff called to inquire about the texts, the  
 12 local office took a long time to figure out what was going on, making it apparent  
 13 that it had not been properly trained as to this telemarketing, or requests not to  
 14 call.

15       57.       Plaintiff and the Sub-Class were damaged by Jackson Hewitt's  
 16 failure to maintain a proper internal Do Not Call policy, and/or to adhere to the  
 17 one it had. Their privacy was invaded in receiving unsolicited calls, and they  
 18 were not provided adequate or legal explanation of how to cause Jackson Hewitt  
 19 to stop.

20       58.       The violations described herein were reckless or intentional.  
 21 Jackson Hewitt knows about the TCPA's requirements to have a valid internal Do  
 22 Not Call policy, but has elected not to do so.

23       WHEREFORE, Plaintiff, individually and on behalf of the Sub-  
 24 Class, requests that the Court appoint him as Class representative, appoint  
 25 his counsel as Class Counsel, and enter judgment against Defendant for:

26       A.       Certification of the Sub-Class as alleged herein;  
 27       B.       A declaration that Defendant violated the TCPA as to Plaintiff

and the Sub-Class;

- C. An injunction to prevent further violations;
- D. Damages pursuant to 47 U.S.C. § 227(c)(5), as applicable;
- E. Costs, expenses, and attorneys' fees, to the extent permitted by law; and
- F. Such other or further relief as the Court deems just and proper.

## **JURY DEMAND**

Plaintiff requests a jury trial as to all claims so triable.

Respectfully submitted,

JEFF HANCOCK, Individually and on  
Behalf of All Others Similarly Situated

Dated: April 5, 2019

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